

Sisti
PL-II

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-220966 **DATE:** January 14, 1986
MATTER OF: Building Maintenance Specialists

DIGEST:

Where contracting officer's improper rejection of low small business offeror as nonresponsible without referring the matter to SBA for certificate of competency consideration is cured by subsequent referral to SBA, protest is moot and need not be considered, as SBA has conclusive authority to determine a small business' responsibility.

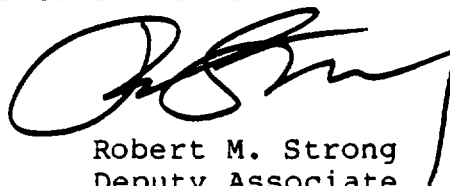
Building Maintenance Specialists (BMS), a small business, protests any award of 24 contracts for janitorial and cleaning services under requests for quotations (RFQ's) issued by the Army at Fort Riley, Kansas, for custodial work. BMS claims it was low offeror under the RFQ's, which were issued using the small purchase procedures, and basically protests the Army's determination that the firm was nonresponsible. We dismiss the protest.

Because some of BMS's quotes were very low in relation to the work area and time to be involved with the contracts and because the Army at Fort Riley had no previous experience with BMS, the Army requested references from the firm. BMS named as references Fort Sheridan, Illinois, the Federal Aviation Administration (FAA) in Des Plaines, Illinois, and the Corps of Engineers (Corps) in Jacksonville, Florida. After phoning these activities, the Army found that there had been a 50-percent default rate at Fort Sheridan, performance difficulties with the FAA, and unsatisfactory performance with the Corps. As a result, the contracting officer determined BMS was nonresponsible. The Army, however, did not refer the determination to the Small Business Administration (SBA) under the certificate of competency (COC) procedures, believing that such referral was not required in a small purchase situation. The Army submitted a request for a COC to the SBA only after BMS filed its protest with our Office.

034278

The SBA, not our Office, has the statutory authority to review a contracting officer's finding of nonresponsibility and then to determine conclusively a small business concern's responsibility by issuing or refusing to issue a COC. 15 U.S.C. § 637(b) (1982); Federal Acquisition Regulation (FAR), 48 C.F.R. subpart 19.6 (1984). The record reveals that in rejecting BMS, the contracting activity was unaware that the small purchase exemption from the requirement for referral of nonresponsibility determinations to SBA had been eliminated from the procurement regulations by virtue of section 401 of the Small Business and Federal Procurement Competition Enhancement Act of 1984, Pub. L. No. 98-577, 98 Stat. 3082, Oct. 30, 1984. See Sess Construction Co., 64 Comp. Gen. 355 (1985), 85-1 C.P.D. ¶ 319. By its referral of BMS's responsibility to SBA subsequent to BMS's protest, however, the Army has cured the impropriety. Further, the record includes a letter from Fort Riley to SBA, in which the Army states that if the SBA issues a COC, the Army "will consider award based on findings and appeal process as specified in FAR." We assume this means that if a COC is issued, BMS will have the opportunity to complete the contracts.

We have held that where a contracting officer's improper rejection of a low small business offeror as non-responsible without referring the matter to SBA for COC consideration is cured by subsequent referral to SBA, the protest is moot and need not be considered. See Horne Health Care, Inc., B-194925, July 12, 1979, 79-2 C.P.D. ¶ 29. This protest therefore is dismissed.



Robert M. Strong
Deputy Associate
General Counsel